IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2661 OF 2006

1. Krimpex Synthetics Limited
having its office at Silk House,
Silk Bazar,
Mumbai – 400 002

2. Mr.Sharad Khanna
Managing Director,
residing at Kapur Mahal, ..Applicants
Marine Drive,
Mumbai – 400 020

3. Mr.Sumesh Khanna, Director
residing at 1st Pasta Lane
Mumbai – 400 005

V/s.

1. ICICI BANK LIMITED a company
Incorporated under the Companies
Act, 1956 and Scheduled Bank
within the meaning of the Reserve
Bank of India Act and having its
Corporate Office at ICICI Bank
Towers, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051 with whom
ICICI Limited was amalgamated
purusant to the orders passed
by the Hon'ble Bombay High Court
(through Ms.Kalpana Agarwal
Manager of the Complainant)
..Respondents

2. The State of Maharashtra,
High Court,
Mumbai

Mr. A.H.H.Ponda with Sheetal Shah for the applicants

Mr.Dinesh Purandare i/b. Ms.Revati Mohite- Dere for respondent No.1
Mr.S.V.More, A.P.P.

CORAM : A.S.OKA, J

DATE : DECEMBER 20th, 2006

ORAL JUDGMENT

1. On 23rd November, 2006 the submissions of the learned counsel appearing for the parties were fully heard. However, order was not passed on that day only to enable the Applicants to make an effort for amicable settlement. On 7th and 11th December, 2006, time was again granted to the Applicants by way of indulgence to enable them to approach the concerned Respondents with a view to amicably settle the dispute. Today, in the morning session when this Application was called out, the learned counsel appearing for the parties stated that no settlement has been arrived at.

2. The prayer in this application under Section 482 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as “said code”) for

quashing a complaint filed by the first Respondent under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (Hereinafter referred to as “said Act of 1881”).

3. The case of the first Respondent is that in recovery proceedings filed by the first Respondent (ICICI Bank Limited) before the Mumbai Debt Recovery Tribunal – I, there was a settlement in the form of consent terms dated 29th September, 2003. On the basis of the said settlement, the first Applicant had issued two post dated cheques in the sum of Rs.35,00,000/- and Rs.44,00,000/- respectively drawn on Oriental Bank of Commerce, Kalbadevi Branch, Mumbai. The cheques were signed by the second Applicant in his capacity as the Managing Director of the first Applicant. When the first Respondent presented the cheque in the sum of Rs.35,00,000/- for encashment, an intimation of dishonour dated 7th January, 2004 of the said cheque was received by the first Respondent. The first Respondent issued a notice of demand dated 4th February, 2004 in respect of the said dishonoured

cheque to the Applicants. The notice was duly served to the applicants. However, the demand made in the notice was not complied with and therefore, the aforesaid complaint was filed by the first Respondent. On the said complaint filed by the first Respondent, the learned Magistrate issued a process against the Applicants.

4. The learned counsel appearing for the Applicants submitted that after the cheque in the sum of Rs.35,00,000/- was dishonoured, from 20th October, 2003 to 29th June, 2005 the Applicants made payments of Rs.3,00,000/-, 10,00,000/-, 5,00,000/-, 5,00,000/- 5,00,000/- and 10,00,000/- either by pay order or by cheques to the first respondent and/or to the first Respondent's the assignee M/s.Kotak Mahindra Bank Limited. He submitted that thus an amount of Rs.38,00,000/- has been paid by the applicants against the cheque in the sum of Rs.35,00,000/-. The learned counsel submitted that there is no dispute as regards the aforesaid payments made by the Applicants. He submitted that in October, 2004 the first respondent assigned all

its rights, title and interests in respect of the alleged debts payable by the Applicants in favour of the M/s.Kotak Mahindra Bank Limited. He submitted that from October, 2004, the first Respondent was not legally entitled to claim any amount from the Applicants and therefore, there was no subsisting liability in favour of the first Respondent. He submitted that the payment of the aforesaid amounts was made in good faith to the first Respondent and/or its assignee and therefore, after accepting the payments, the first Respondent ought to have withdrawn the complaint. He invited my attention to the letter dated 29th June, 2005 sent by the Applicants to the M/s.Kotak Mahindra Bank Limited and submitted that in view of the said letter, the complaint filed by the first Respondent ought to have been withdrawn. He submitted that in view of the subsequent payments made by the Applicants which were received by the first respondent and its assignee, the alleged offence ought to have been compounded by virtue of provisions of Section 147 of the said Act of 1881. He, therefore, submitted that this is a fit case

for exercising the power under Section 482 of the said Code.

5. The learned counsel appearing for the first Respondent submitted that all along the Applicants have been gross defaulters. He invited my attention to the consent terms. He pointed out that the Applicants committed gross default as the cheque in the sum of Rs.35,00,000/- on the basis of which settlement was arrived at was dishonoured. He submitted that the subsequent payments allegedly made by the Applicants are of no consequence. He submitted that assignment in favour of the M/s.Kotak Mahindra Bank Limited was no ground to interfere under Section 482 of the said Code.

6. I carefully considered the submissions made by the learned counsel appearing for the parties. It is averred in the complaint filed by the first respondent that the cheque in the sum of Rs.35,00,000/- dated 30th September, 2003 was handed over to the first respondent by the applicants on the basis of the consent terms dated 29th September,

2003 filed by the Applicants and the first Respondent before the Debt Recovery Tribunal. A copy of said consent terms filed on record discloses that by the said consent terms dated 29th September, 2003, earlier two consent terms arrived between the parties were modified. As of today there is no dispute about the fact that the cheque in the sum of Rs.35,00,000/- was dishonoured as the funds in the bank account of the first Applicant were insufficient. A notice dated 4th February, 2004 under Section 138(b) of the said Act, 1881 was served by the first respondent to the Applicants. By the said notice, the applicants were called upon to pay a sum of Rs.35,00,000/-. At this stage, there is no dispute about the service of the said notice. It is also not in dispute that the Applicants did not pay the amount as per the demand made by the said notice within the time stipulated therein. The complaint was filed by the first respondent on 5th March, 2004. Till that date no payment was made by the applicants.

7. The Applicants are relying upon in this

application the payments of various amounts made from 20th October, 2003 onwards. The first payment is made on 20th October, 2003 which is only of a sum of Rs.3,00,000/-. All subsequent payments have been made by the Applicants from August, 2004 onwards i.e. long after the period provided for in notice dated 4th February, 2004 expired. The last payment of Rs.10,00,000/- was made on 29th June, 2005. The assignment in favour of the M/s.Kotak Mahindra Bank Limited was made by the first respondent on 30th September, 2004. Thus the assignment has been made long after the complaint was filed by the first Respondent. Therefore, the subsequent assignment is no ground to quash the complaint.

8. The complaint filed by the first respondent, read as a whole, clearly discloses commission of offence under Sections 138 read with 141 of the said Act of 1881. Prima facie all ingredients of the offence are made out. The complaint cannot be quashed on the basis of payments made by the Applicants long after filing of complaint. The

assignment in favour of the M/s.Kotak Mahindra Bank Limited is made seven months after filing of the complaint. Therefore, at this stage, there is sufficient material on record to proceed with the complaint against the Applicants. If the complaint read as a whole makes out a case for proceeding against the Applicants the same cannot be quashed. There is no document on record to show that the first Respondent had agreed to compound the offence on the basis of belated payments made by the applicants.

9. The power under Section 482 of the said Code has to be exercised sparingly and only in exceptional cases. In the present case the cheque in the sum of Rs.35,00,000/- was issued by the Applicants on the basis of a settlement between the parties made before the Debt Recovery Tribunal. The said cheque has been dishonoured and prima facie all ingredients of the offence under Section 138 read with Sections 141 and 142 of the said Act of 1881 have been made out. Hence, no case is made for interference in this application under Section

482 of the said Code. Hence, Application is rejected.

10. It is made clear that the observations which are made in this order are for limited purposes of considering prayer made in this application. All contentions of the parties on merits of the pending complaints are expressly kept open.

(A.S.OKA, J.)